IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/10/2003

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

C.M.A.No.653 of 1996

G.Kotteeswaran ... Appellant

-Vs-

1. P.Venkatesan

2. The Oriental Insurance Co.Ltd.
No.115, Broadway, madras-108.

3. The Pallavan Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai, Madras-2. ... Respondents.

C.M.A. filed against the judgment and decree dated 4.8.1994
in MACT OP.No.2727 of 1991 on the file of V Court of Small Causes, Madras (
Motor Accidents Claims Tribunal, Madras).

!For appellant : Mr.N.M.Muthurajan

^For respondents : Mr.V.Mohan for R1.
Mr.K.S.Narasimhan for R2
Mr.G. Muniratnam for R3.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

This appeal is directed against the award passed by the Motor
Accidents Claims Tribunal (V Court of Small Causes), Chennai in MACT.O.P.
No.2727 of 1991 dated 4.8.1994. The unsuccessful petitioner/claimant is the
appellant herein. He filed the petition claiming compensation of a sum of
Rs.1 lakh on the ground that while he was proceeding in his motorcycle bearing
No.TMZ.662 in Periyar Salai, Chennai at about 8 p.m. on 28.9.1991 in
east-west direction, another motorcycle coming in opposite direction tried to

overtake a bus belonging to Pallavan Transport Corporation and dashed against the motorcycle driven by the claimant as a result of which the accident had occurred and the claimant sustained injuries and hence, a sum of Rs.1 lakh was claimed as compensation for the injuries sustained by him.

2. The plea of the claimant that the accident had occurred due to rash and negligent driving of the driver of the motorcycle coming in the opposite direction was denied by the first respondent/owner of the motorcycle who drove the vehicle coming in opposite direction and also by the Insurance Company. The Pallavan Transport Corporation which was impleaded as the third respondent in the claim petition also denied the case of the claimant that the Pallavan Transport Corporation was in any way responsible for the accident. The Motor Accidents Claims Tribunal (hereinafter referred to as 'the Claims Tribunal'), on the basis of evidence, came to the conclusion that the plea of the claimant that due to rash and negligent driving of the motorcycle coming in the opposite direction, the accident had occurred was not correct. The Claims Tribunal found that the claimant has driven his motorcycle on the wrong side of the road crossing the yellow line and only due to the rash and negligent driving of the claimant the accident had occurred. The Claims Tribunal also found that the bus belonging to Pallavan Transport Corporation was not in any way involved in the accident. The Claims Tribunal held that the claimant was solely responsible for the accident, however, considered other issues including the amount of compensation payable to the claimant and fixed the compensation at Rs.32,593/-.

3. One other point that was raised by the claimant before the Claims Tribunal was that though the appellant was at fault, since he sustained injuries as the result of the accident, the Insurance Company as well as the Pallavan Transport Corporation would be liable to pay compensation under the head, 'no fault liability'. The Claims Tribunal relied upon the decision of this Court in the case of NEW INDIA ASSURANCE CO. LTD. v. MEENAL AND OTHERS (1993 ACJ 522) and held that since the accident had occurred due to the negligence of the claimant and no wrong was committed either by the owner of the motorcycle coming from the opposite direction or by the driver of the bus belonging to the Pallavan Transport Corporation, the Insurance Company as well as the Pallavan Transport Corporation was not required to pay any amount of compensation in the absence of any liability being imposed on them. In the result, the Claims Tribunal dismissed the claim petition. It is against the order of the Claims Tribunal, the present appeal has been preferred.

4. The first submission of learned counsel for the appellant is that the appellant was not responsible for the accident and it was only due to the negligence of the driver of the motorcycle coming in the opposite direction when he tried to overtake the bus belonging to the Pallavan Transport Corporation, the accident had occurred and therefore, the Claims Tribunal was not correct in holding that the accident had occurred due to the negligence of the appellant. We have gone through the evidence on record and we find that the appellant was proceeding from east to west in Periyar Salai and the evidence discloses that the appellant has crossed the yellow line and dashed against the motorcycle coming in the opposite direction and the accident occurred on the right side of the road. We also find that though the

motorcycle coming in the opposite direction has tried to overtake the bus belonging to Pallavan Transport Corporation, the bus and the motorcycle were within the yellow line and it was only the appellant who crossed the yellow line and dashed against the motorcycle coming from the opposite direction. Thanthai Periyar Salai is an arterial road in the City and it is a fairly broad road and the fact that the appellant has crossed the yellow line drawn in the middle of such a broad road and dashed the vehicle coming in the opposite direction clearly shows that the accident had occurred only due to the negligence and rash driving of the appellant. The field map also discloses that the appellant was the cause of the accident. We also find that the bus belonging to Pallavan Transport Corporation was not in any way involved in the accident and there is also no evidence to show that the driver of the motorcycle coming in the opposite direction was negligent in overtaking the bus belonging to Pallavan Transport Corporation. The evidence on the other side shows that the two vehicles coming in the opposite direction were within the yellow line and only due to the rash and negligent driving of the appellant, the accident had occurred. We hold that the finding of the Claims Tribunal that the accident had occurred due to rash and negligent driving of the appellant is quite justified and based on material on record and there are absolutely no reasons to take a different view on this aspect. We reject the argument of the counsel for the appellant as not sustainable.

5. Learned counsel for the appellant next submitted that the Claims Tribunal was not correct in dismissing the entire claim petition and according to him, the Claims Tribunal should have awarded the compensation under the head, 'no fault liability' under section 140 of the Motor Vehicles Act, 1988. The Claims Tribunal has followed the decision of this Court in NEW INDIA ASSURANCE CO. LTD. v. MEENAL AND OTHERS (1993 ACJ 522) wherein this Court held that though accident had occurred due to his own negligence of the driver and no wrong was committed by the driver of the other vehicle which involved in the accident, the Insurance Company would not be liable to pay any compensation even under the head, 'no fault liability'. Learned counsel for the appellant referred to the decision of the Supreme Court in K. NANDAKUMAR v. M.D., THANTHAI PERIYAR TRANSPORT CORPN. LTD. (1996 ACJ 555) where the Supreme Court was dealing with a case of collision between a bus and a motorcycle due to the negligent driving of the motorcyclist who suffered permanent disablement. The Supreme Court, while reversing the decision of this Court, held that though the injured/ claimant was solely responsible for the accident, he cannot be denied compensation under the head, 'no fault liability'. The Supreme Court also held that the Insurance Company should pay compensation with interest. Though the decision was rendered with reference to section 92A of the Motor Vehicles Act, 1939, the ratio laid down by the Supreme Court in K.Nandakumar's case (1996 ACJ 555) would equally apply to the provisions of section 140 of the Motor Vehicles Act, 1988.

6. Mr.K.S.Narasimhan, learned counsel for the second respondent referred to the decision in NEW INDIA ASSURANCE CO. LTD. v. SANJAY VAJUBHAI PARI (1999 ACJ 1247) where the Gujarat High Court has taken the view that the driver of the vehicle who was not responsible for the accident was also liable to pay compensation to the owner or driver of the other vehicle, though the owner or driver of the other vehicle was negligent

in driving the vehicle. Learned counsel also referred to the decision of the Karnataka High Court in UNITED INDIA INSURANCE CO.LTD. v. MAIRE SHARIGARTHI (2000 ACJ 182) and the decision of a Full Bench of Orissa High Court in NEW INDIA ASSURANCE CO. LTD. v. DINANATH AGRAWALLA (2000 ACJ 525) wherein Mr.A.Pasayat, Actg.C.J. (as His Lordship then was), presiding over the Full Bench of the Orissa High Court, held that before compensation is awarded under section 92-A of the Motor Vehicles Act, 1939, the Tribunal should satisfy itself with reference to the following aspects:-

" (a) an accident has arisen out of the use of a motor vehicle;

(b) the said accident has resulted in permanent disablement of the person who is making claim, or death of the person whose legal representatives are making the claim; and

(c) the claim is made against the owner and insurer of the motor vehicle involved in the accident. In other words, the vehicle is the subject-matter of insurance."

We are of the view, the ratio laid down by the Supreme Court in K. Nandakumar's case (1996 ACJ 555) and the decision of the Gujarat High Court in Sanjay Vajubhai Pari's case (1999 ACJ 1247) and the decision of the Karnataka High Court in Maire Sharigarthi's case (2000 ACJ 182) and the decision of the Orissa High Court, cited supra, would equally apply to the facts of the case.

7. As far as Pallavan Transport Corporation, third respondent in the appeal is concerned, the bus belonging to the Pallavan Transport Corporation was not responsible in any way for the accident and there was no collision between the motorcycle driven by the appellant and the bus belonging to the third respondent Corporation. Hence, the third respondent is not liable to pay compensation even under the category of no fault liability. As far as the first respondent whose vehicle has been insured with the second respondent is concerned, it is no doubt true that the first respondent was not responsible for the accident and the accident had occurred only due to the rash and negligent driving of the appellant himself. Though there is no logic in directing the victim (first respondent) of the accident to pay compensation as the appellant was solely responsible and he was the tort feasor and the first respondent was not responsible for the accident, yet, under the law as it stands, the appellant is entitled to the claim compensation from the first respondent as well as from the second respondent with whom the vehicle of the first respondent had been insured. Therefore we hold that the first respondent and the second respondent/Insurance Company are liable to pay compensation. Since the accident had occurred on 28.9.1991, the amount of compensation payable under the category of no fault liability is Rs.12,000/- and the appellant is entitled to interest at the rate of 9% p.a. on the sum of Rs.12,000/- from the date of petition.

8. Accordingly, the appeal stands allowed partly and there will be an award against the respondents 1 and 2 directing them to pay to the appellant a sum of Rs.12,000/- as compensation along with interest at the rate of 9% p.a. from the date of claim petition till the date of payment. No costs.

Index: Yes
Website: Yes

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To
The Registrar,
Small Causes Court,